

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
CLERK'S OFFICE

DAVID P. FONTAINE

Plaintiff,

v.

U.S. INTERNAL REVENUE SERVICE,
 COMMISSIONER OF IRS, IRS EMPLOYEES -
 Sheila O'Brien, Jane B. Flanagan, Larry Leder and
 Dennis Parizek, STATE OF CONNECTICUT, CT
 DEPARTMENT OF REVENUE SERVICES,
 CDORS COMMISSIONER, GOVERNOR JOHN
 ROWLAND, CT COMMISSIONER GENE GAVI,
 STATE OF MASSACHUSETTS, MA
 DEPARTMENT OF REVENUE, MA
 COMMISSIONER OF REVENUE
 Defendants.

CIVIL ACTION

NO. 04 30080-MAP

U.S. DISTRICT COURT
DISTRICT OF MASS

MAY 13 A.D. 2004

**THE DEFENDANTS STATE OF MASSACHUSETTS, MA DEPARTMENT OF
 REVENUE AND THE MA COMMISSIONER OF REVENUE MOTION TO DISMISS**

Pursuant to the provisions of Rule 12(b)(6) of the Federal rules of Civil Procedure, the Defendants State of Massachusetts (sic), MA Department of Revenue and the MA Commissioner of Revenue ("Commonwealth Defendants") move this Court to dismiss the above-entitled action for failure to state a claim upon which relief can be granted.

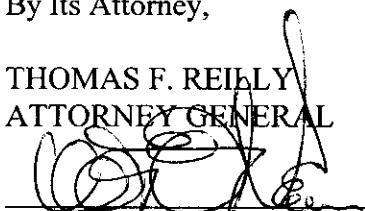
In support of such motion, the Commonwealth Defendants state that this action involves the assessment upon and attempts to collect income tax from the Plaintiff David P. Fontaine by the Internal Revenue Service and the Connecticut Department of Revenue Services. The Plaintiff's complaint is comprised of 44 pages and 20 attached exhibits. All of the allegations in the Plaintiff's complaint deal with the actions of the Internal Revenue Service or the Connecticut Department of Revenue Services to collect overdue income taxes from the Plaintiff. It does not appear from the face of the complaint that the Commonwealth Defendants have taken any action to enforce or collect any overdue taxes by lien or levy from the Plaintiff. None of the Relief sought by the Plaintiff is

directed at the Commonwealth Defendants or designed to restrain any action taken by the Commonwealth Defendants.

WHEREFORE, the Commonwealth Defendants respectfully request that this case be dismissed since the Complaint makes no allegation of any actions by them to collect any overdue taxes, if any, from the Plaintiff.

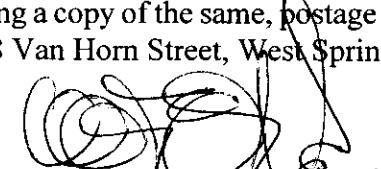
Respectfully submitted,
Commonwealth of Massachusetts
By Its Attorney,

THOMAS F. REILLY
ATTORNEY GENERAL


William P. O'Neill BBO#379745
Assistant Attorney General
Western Massachusetts Division
1350 Main Street
Springfield, MA 01103-1629
(413)784-1240 FAX: 784-1244

CERTIFICATE OF SERVICE

I, William P. O'Neill, Assistant Attorney General, Western Massachusetts Division, 1350 Main Street, Springfield, MA 01103-1629 do hereby certify that on May 12, 2004, I caused the foregoing THE DEFENDANTS STATE OF MASSACHUSETTS, MA DEPARTMENT OF REVENUE AND THE MA COMMISSIONER OF REVENUE MOTION TO DISMISS to be served upon the parties in this action by mailing a copy of the same, postage prepaid, first class mail to the Plaintiff *Pro Se*: David P. Fontaine, 68 Van Horn Street, West Springfield, MA 01089.


William P. O'Neill
Assistant Attorney General